

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8063 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

SJIVABHAI RAMAJIBHAI

Versus

MAMLATDAR KAMKREJ

Appearance:

MRS KETTY A MEHTA for Petitioner
MR SP DAVE, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.DAVE
Date of decision: 06/02/97

ORAL JUDGEMENT

The dispute centres around the land bearing Survey No. 71/1 of Block No.85, situated at village Kholeshwar under the Choryasi Taluka of the Surat District. The said land belonged to one Shri Ambelal Morar. One Ravajibhai Bhagwanbhai and others had purchased the said land from Ramajibhai Bhagwanbhai and

others. These sale transactions came to be reflected by two Mutation Entries, namely, Mutation Entry Nos. 1159 and 1182. These entries came to be duly certified in due course of time. Any how, on January 2, 1996, the petitioner and other persons received a show cause notice to show cause as to why the above said entries should not be deleted from the revenue record, as the transactions in question were against law and violative of the provisions contained in Section 2(6) read with Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948. Upon the consideration of the material in question the Collector, Surat, by his orders dated February 5, 1996 was pleased to cancel the said entries. This had happened though the petitioner had urged that he was an agriculturist and was having other agricultural lands. Any how, when the Collector, Surat was not inclined to accept his case and when he had lost before him, the petitioner and others had preferred the appeals before the Special Secretary, Revenue Department (Appeals), State of Gujarat, against the judgment and order of the Collector dated February 5, 1996. It appears that, the above said proceedings are pending before the learned Special Secretary, but meanwhile, the petitioner had received a notice from the Mamlatdar, Kankrej saying that there has been a breach of the provisions contained in Section 2(6) read with Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948. The petitioner challenges this notice dated September 12, 1996, available at Annexure.D.

The contention coming from learned Counsel Mrs.Ketty Mehta is that, when the the entire question was pending before the learned Special Secretary to the Government, Gujarat State, the Mamlatdar, Kankrej could not have issued the above said show cause notice. The reason according to the learned Counsel is pure and simple. According to the learned Counsel, the very same question which was pending before the Government was sought to be not only accepted in favour of the Revenue Department, but was also sought to be enforced against the petitioner. The facts which are eloquently clear would go to show that the entire question was pending for examination, ascertainment and decision by the State Government and meanwhile, the very same decision cannot be taken by the inferior officer, namely, the Mamlatdar. Therefore, in all probability, the present petition requires a recognition and the above said show cause notice dated September 12, 1996, available at Annexure.D requires to be quashed and set aside. I order accordingly. Rule is made absolute to the above said extent, with no order as to costs.

It should be clarified that, if ultimately, the outcome of the proceedings before the learned Special Secretary is adverse to the petitioner, the Mamlatdar, Kankrej can go on against the petitioner by issuing a fresh show cause notice. Needless it is to say that, it should also be open for the petitioner to approach this Court by taking the appropriate proceedings, if the outcome of the said proceedings before the Government happens to be adverse to them.
